GROUP ART UNIT: 1713

APPEAL NO.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS AND INTERFERENCES

APPELLANT'S BRIEF

Ralph Craig Even

Application for Patent Filed October 22, 2001

Serial No. 10/040,170

AQUEOUS ACRYLIC EMULSION POLYMER COMPOSITION

Ronald D. Bakule
Agent for Appellant

M.L. Reddick
Examiner

Enclosed:
Original + 2 Copies
Fee Transmittal Form (in duplicate)
Certificate of First Class Mailing
Request for one month extension of time

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS AND INTERFERENCES

DN A01087B

In re application of
Ralph Craig Even

Paper No.: 10

Serial No. 10/040,170

Group Art Unit: 1713

Filed: October 22, 2001

Examiner: M.L. Reddick

For: AQUEOUS ACRYLIC EMULSION POLYMER COMPOSITION

Commissioner for Patents
Box 1450
Alexandria, VA 22313-1450

BRIEF FOR APPELLANT

This is an appeal from the final rejection by the Examiner of April 8, 2003 rejecting claims 1-2 and 4-8. Appellant filed a Notice of Appeal pursuant to 37 C.F.R. 1.191 on July 8, 2003.

An authorization to charge payment of the fee for the filing of the Appeal Brief to Deposit Account 18-1850 is also enclosed.

REAL PARTY IN INTEREST [37 C.F.R. 1.192(c)(1)]

The real party in interest is Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106-2399.

RELATED APPEALS AND INTERFERENCES [37 C.F.R. 1.192(c)(2)]

There are no other related appeals or interferences that will directly affect or be directly affected or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS [37 C.F.R. 1.192(c)(3)]

The status of the claims is as follows:

Allowed claims	-	none
Claims objected to	-	none
Claim cancelled	-	3
Claims pending	-	1-2 and 4-12
Claims withdrawn from consideration	-	9-12
Claims rejected	-	1-2 and 4-8
Claims on appeal	-	1-2 and 4-8

STATUS OF AMENDMENTS [37 C.F.R. 1.192(c)(4)]

The rejected claims are set out in Appendix 1.

SUMMARY OF INVENTION [37 C.F.R. 1.192(c)(5)]

Appellant claims (claims 1-2) an aqueous acrylic emulsion polymer comprising,

as copolymerized units, 70 to 99.5% by weight, based on dry polymer weight, monoethylenically unsaturated nonionic (meth)acrylic monomer and

from 0.3 to 10% by weight, based on dry polymer weight, monoethylenically unsaturated acid monomer,

wherein at least 40% by weight, based on dry polymer weight, of said emulsion polymer is formed by redox emulsion polymerization

at a pH of from 4 to 8

in the presence of 0.001 to 0.05 moles chain transfer agent per kg dry polymer weight and

a redox reaction catalyzing metal salt.

Appellant also claims (claims 4-8) an aqueous coating composition including the aqueous acrylic emulsion polymer.

ISSUES [37 C.F.R. 1.192(c)(6)]

The issue is whether appellant's invention of claims 1-2 and 4-8 is unpatentable under 35 USC 102(e) as anticipated by or, in the alternative, under 35 USC 103(a) as obvious over US Patent No. 6,403,703 to Slone ("Slone").

THE REJECTIONS

Claims 1-2 and 4-8 stand finally rejected under 35 USC 102(e) as anticipated by or, in the alternative, under 35 USC 103(a) as being unpatentable over Slone.

The Examiner's Arguments

The Examiner asserts that claims 1-2 are unpatentable under 35 USC 102(e) as anticipated by or, in the alternative, under 35 USC 103(a) over Slone because Slone discloses compositions prepared by a redox emulsion process in the presence of a chain transfer agent and a redox reaction catalyzing metal salt and alleges that Slone's reactions are carried out at a pH falling within the scope of the claims.

GROUPING OF CLAIMS [37 C.F.R. 1.192(c)(7)]

As to the rejection applied against claims 1-2 and 4-8 under 35 USC 102(e) or, in the alternative, under 35 USC 103(a), it is appellant's intention that the rejected claims stand or fall together.

ARGUMENTS [37 C.F.R. 1.192(c)(8)]

Argument with respect to 35 USC 102(e)

The examiner rejected claims 1-2 and 4-8 under 35 USC 102(e) as being unpatentable over Slone because Slone discloses aqueous dispersions based on acrylic emulsion polymers, useful in forming coating compositions, wherein the emulsion polymers include copolymerized nonionic (meth)acrylic monomer and acid monomer in an aqueous system optionally using a redox initiator system.

Appellant respectfully submits that Slone does not disclose an emulsion polymer formed by a redox polymerization at a pH of from 4 to 8. Slone is silent as to the pH of his redox polymerizations. Further, the embodiments of Slone which are formed by a redox polymerization, Slone's Comparative Example C and Example 3 are <u>not</u> inherently formed at a pH of from 4 to 8. Appellant repeated Slone's Example Comparative C and found that at least 40 wt% of Slone's polymer was <u>not</u> formed at a pH of from 4 to 8 (and Slone disclosed that his Example 3 was made by the identical process). Appellant's Declaration under 35 USC 1.132(Paper No.8) to this effect was filed in the first-filed paper after the Examiner's rejection over Slone. Appellant submits that Slone does not disclose each and every element of appellant's claims 1-2 and 4-8,

Further, Slone generically discloses the use of a chain transfer agent but Slone does not disclose polymerization in the presence of 0.001 to 0.05 moles chain transfer agent per kg dry polymer weight, the identity and criticality of which is established only in appellant's application. Appellant respectfully submits that Slone failed to disclose appellant's invention with

sufficient specificity as to chain transfer agent level to meet the requirements of anticipation.

Argument with respect to 35 USC 103(a)

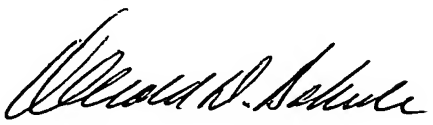
The examiner rejected claims 1-2 and 4-8 under 35 USC 103(a) as being unpatentable over Slone. Appellant respectfully points out that Slone is not available as a 103(a) reference under 102(e) as per 35 USC 103(c) as submitted in Paper No.8. Appellant has provided a statement of common ownership in a separately labeled section in Paper No. 8.

Conclusions

Appellant respectfully submits that the present invention as defined by claims 1-2 and 4-8 was not anticipated over Slone under 35 U.S.C. 102(e) because the reference does not disclose each and every element of his claims. Appellant respectfully submits that the present invention as defined by claims 1-2 and 4-8 was not obvious over Slone under 35 U.S.C. 103(a) because the reference is not available under 102(e) owing to common ownership pursuant to 35 USC 103(c).

Appellant respectfully requests the Board to reverse the Examiner's rejections and enter a Notice of Allowance. The Commissioner is hereby authorized to charge any additional fee which may be required, or to credit any overpayments to Deposit Account 18-1850.

Respectfully submitted,



RONALD D. BAKULE
Agent for Appellant
Registration No. 32,681
Telephone (215)641-7822

Rohm and Haas Company
Independence Mall West
Philadelphia, PA 19105
DATE: October 6, 2003

APPENDIX [37 C.F.R. 1.192(c)(9)]

CLAIMS 1-2 and 4-8

1(amended). An aqueous acrylic emulsion polymer comprising, as copolymerized units, 70 to 99.5% by weight, based on dry polymer weight, monoethylenically unsaturated nonionic (meth)acrylic monomer and from 0.3 to 10% by weight, based on dry polymer weight, monoethylenically unsaturated acid monomer, wherein at least 40% by weight, based on dry polymer weight, of said emulsion polymer is formed by redox emulsion polymerization at a pH of from 4 to 8 in the presence of 0.001 to 0.05 moles chain transfer agent per kg dry polymer weight and a redox reaction catalyzing metal salt.

2(original). The acrylic emulsion polymer of claim 1 wherein said redox polymerization is effected in the presence of 0.0025 to 0.025 moles chain transfer agent per kg dry polymer weight.

4(amended). An aqueous coating composition comprising an aqueous acrylic emulsion polymer, said polymer comprising, as copolymerized units, 70 to 99.5% by weight, based on dry polymer weight, monoethylenically unsaturated nonionic (meth)acrylic monomer and from 0.3 to 10% by weight, based on dry polymer weight, monoethylenically unsaturated acid monomer, wherein at least 40% by weight, based on dry polymer weight, of said emulsion polymer is formed by redox emulsion polymerization at a pH of from 4 to 8 in the presence of 0.001 to 0.05 moles chain transfer agent per kg dry polymer weight and a redox reaction catalyzing metal salt.

5(original). The aqueous coating composition of claim 4 wherein said redox polymerization is effected in the presence of 0.0025 to 0.025 moles chain transfer agent per kg dry polymer weight.

6(original). The aqueous coating composition of claim 4 having a PVC of 15 to 38 and having VOC less than 5% by weight based on the total weight of the coating composition.

7(original). The aqueous coating composition of claim 4 having a PVC greater than 38 and having VOC less than 3% by weight based on the total weight of the coating composition.

8(original). The aqueous coating composition of claim 4 having a PVC of 15 to 85 and having VOC less than 1.7% by weight based on the total weight of the coating composition.

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS AND INTERFERENCES

DN A01087B

In re application of
Ralph Craig Even

Paper No.: 10

Serial No. 10/040,170

Group Art Unit: 1713

Filed: October 22, 2001

Examiner: M.L. Reddick

For: AQUEOUS ACRYLIC EMULSION POLYMER COMPOSITION

Commissioner for Patents
Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF FIRST CLASS MAILING

Dear Sir:

I hereby certify that this Original Appeal Brief and 2 copies are being deposited as First Class Mail with the United States Postal Service in an envelope addressed to the Commissioner for Patents, Box 1450, Alexandria, VA 22313-1450 on the date indicated next to my signature below.

Date October 7, 2003 Signature Donald O. Nickerson